

**REMARKS**

Claims 22, 23, 27, 28, 36, 37 and 41-53 are pending in this application. By this Amendment, claim 52 is amended. Support for the amendment to claim 52 may be found at least at page 38, lines 19-20 of the specification. No new matter is added. Claims 29 and 31 are canceled without prejudice to or disclaimer of the subject matter recited in those claims. Reconsideration of the application based on the above amendments and the following remarks is respectfully requested.

The Office Action, on page 2, rejects claims 22, 23, 27-29, 37, 42, 47 and 48 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,301,252 to Baker et al. (hereinafter "Baker") in view of U.S. Patent No. 4,629,862 to Kitagawa et al. (hereinafter "Kitagawa"). The Office Action, on page 10, rejects claims 31 and 46 under 35 U.S.C. §103(a) as being unpatentable over Baker in view of Kitagawa and further in view of U.S. Patent No. 5,192,506 to Kureshy et al. (hereinafter "Kureshy"). The Office Action, on page 13, rejects claim 53 under 35 U.S.C. §103(a) as being unpatentable over Baker in view of Kitagawa, Kureshy and further in view of U.S. Patent No. 6,056,342 to Chan. The Office Action, on page 14, rejects claims 41, 43 and 44 under 35 U.S.C. §103(a) as being unpatentable over Baker in view of Kitagawa and further in view of U.S. Patent No. 5,257,128 to Diller et al. (hereinafter "Diller"). The Office Action, on page 15, rejects claim 50 under 35 U.S.C. §103(a) as being unpatentable over Baker in view of Kitagawa, Diller and further in view of U.S. Patent No. 5,241,415 to Argentieri. The Office Action, on page 16, rejects claim 45 under 35 U.S.C. §103(a) as being unpatentable over Baker in view of Kitagawa and further in view of U.S. Patent No. 5,552,321 to Focht. The Office Action, on page 17, rejects claims 49 and 52 under 35 U.S.C. §103(a) as being unpatentable over Baker in view of Kitagawa and further in view of Argentieri. The Office Action, on page 19, rejects claim 51 under 35 U.S.C. §103(a) as being unpatentable over Baker in view of Kitagawa and

further in view of U.S. Patent No. 5,181,382 to Middlebrook. These rejections are respectfully traversed.

With regard to the rejection of claim 22, the Office Action asserts that Baker teaches many of the features recited in claim 22. The Office Action concedes that Baker fails to teach the heater to be a plate-type having laminate plates and upper plate or frame. The Office Action relies on Kitagawa, and its disclosure of a sample heater for use in microscopes, to make up for this shortfall.

Kitagawa is directed to a heater for microscopes for heating a sample and maintaining the sample, which is mounted on the platform of the microscope, at a preset temperature during observation of the sample (Abstract). The Office Action asserts that Kitagawa, at col. 10, lines 5-22 and Fig. 8, teaches features that correspond to the recited heater that has a laminate comprising upper and lower plates and a heating element interposed therebetween, a top plate disposed above the upper plate with a space from the upper plate, and a frame for supporting the laminate and the top plate. This analysis of the Office Action fails for at least the following reason.

Kitagawa teaches, at col. 10, lines 17-22, that an inter-seat 80 has an observation through-hole 80a substantially in its center part and a heater 81 for heating the inter-seat 80 such as a sheet heater which is attached to a portion thereof so as not to hinder the observation field on the back of the inter-seat 80. Because the inter-seat 80 is attached to the sheet heater 81, the sheet heater 81 is not isolated from the inter-seat 80, and therefore, Kitagawa cannot reasonably be considered to have suggested a space between the inter-seat 80 and the sheet heater 81. Therefore, it is unreasonable for the Office Action to assert that Kitagawa can reasonably be relied upon to have suggested a heater that has a laminate comprising upper and lower plates and a heating element interposed therebetween, a top plate

disposed above the upper plate with a space from the upper plate, and a frame for supporting the laminate and the top plate, as recited in claim 22.

With regard to the Office Action's rejection of claim 27, the Office Action asserts that Baker teaches many of the features recited in claim 27. The Office Action concedes that Baker fails to teach that the unit is adapted to be placed on the stage without contacting the heater. The Office Action relies on Kitagawa to make up for this shortfall.

Kitagawa teaches, in Fig. 1, a water vessel 23 filled with water is mounted on the inter-seat 3a, which is also a heater. Because the water vessel 23 is mounted directly on the inter-seat 3a, Kitagawa cannot reasonably be relied upon in the manner the Office Action suggests. Specifically, because the water vessel 23 is mounted directly on the inter-seat 3a, Kitagawa cannot reasonably be considered to have suggested that the unit is adapted to be placed on the upper surface of the stage of the microscope so as not to contact with the heater with a spacing defined therebetween, as recited in independent claim 27.

For at least the foregoing reasons, no combination of Kitagawa with Baker can reasonably be considered to have suggested the combinations of all the features recited in independent claims 22 and 27. Further, dependent claims 23, 28, 37 and 41-53 would also not have been suggested by the various combinations of currently-applied references for at least the dependence of these claims on independent claims 22 and 27, as well as for the separately patentable subject matter that each of these claims recites.

Accordingly, reconsideration and withdrawal of the rejections of claims 22, 23, 27, 28, 37 and 41-53 under 35 U.S.C. §103(a) over the various combinations of currently-applied references are respectfully requested.

The Office Action, on page 19, rejects claim 36 under 35 U.S.C. §103(a) as being unpatentable over Baker in view of Kitagawa and further in view of U.S. Patent No. 5,717,190 to Inoue. This rejection is respectfully traversed.

The Office Action asserts that Baker teaches many of features recited in independent claim 36. The Office Action concedes that Baker fails to disclose the lid having a heating portion. The Office Action relies on Kitagawa to make up for this shortfall. The Office Action concedes that neither Baker nor Kitagawa disclose a lid heater that has a conductive film layer disposed between glass plates. Rather, the Office Action relies on Inoue, in its disclosure of a transparent heating plate for examination of specimens and a transparent heating device for use therewith, to make up for this shortfall. The Office Action asserts that it would have been obvious to modify the lid heater of Baker and Kitagawa to include the laminate structure with glass plates as taught by Inoue because Inoue can heat the vicinity of the center of the heater used for examination at a uniform temperature without needing a through hole and the glass plates have high transparency and low heat conductivity. This analysis of the Office Action fails for at least the following reason.

Inoue is directed to a transparent heater plate and transparent heating device for examination of specimens under a microscope that can heat the entire transparent conductive film between electrodes of the transparent heating plate with a small difference in temperature (Abstract). Inoue, at col. 12, line 22 - col. 13, line 16, discusses the various components that are included in its transparent heating plate. However, Inoue fails to teach that the heating plate includes a lid. Inoue's heater plate is used on a specimen container that is placed and heats the specimen within the specimen container from the bottom. The incubator recited in claim 36 comprises a lid so as to form a closed-type incubator. Because Inoue fails to teach a heater that has a lid, it is unreasonable for the Office Action to assert that one of ordinary skill would have predictably modified Baker and Kitagawa to incorporate the features taught in Inoue merely because the heater in Inoue can heat the vicinity of the center of the heater used for examination at a uniform temperature without needing a through hole and because the glass plates have high transparency and low heat conductivity.

For at least the foregoing reason, one of ordinary skill would not have predictably modified Baker and Kitagawa to incorporate the transparent heater of Inoue to render obvious the subject matter recited in independent claim 36.

Accordingly, reconsideration and withdrawal of the rejection of claim 36 under 35 U.S.C. §103(a) over the combination of Baker, Kitagawa and Inoue are respectfully requested.

In view of the foregoing, Applicant respectfully submits that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 22, 23, 27, 28, 36, 37 and 41-53 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the telephone number set forth below.

Respectfully submitted,



James A. Oliff  
Registration No. 27,075

Jesse D. Sukman  
Registration No. 54,477

JAO:JDS/sld

Date: May 8, 2009

Attachment:  
Petition for Extension of Time

**OLIFF & BERRIDGE, PLC**  
**P.O. Box 320850**  
**Alexandria, Virginia 22320-4850**  
**Telephone: (703) 836-6400**

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